



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 210407-0077]

RIN 0648-BK42

Pacific Halibut Fisheries; Catch Sharing Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to revise regulations for the commercial individual fishing quota (IFQ) Pacific halibut (halibut) fisheries for the 2021 IFQ fishing year. This proposed rule would remove limits on the maximum amount of halibut IFQ that may be harvested by a vessel, commonly known as vessel use caps, in IFQ regulatory areas 4A (Eastern Aleutian Islands), 4B (Central and Western Aleutian Islands), 4C (Central Bering Sea), and 4D (Eastern Bering Sea). This action is needed to provide additional flexibility to IFQ participants in 2021 to ensure allocations of halibut IFQ can be harvested by the limited number of vessels operating in these areas. This action is within the authority of the Secretary of Commerce to establish additional regulations governing the taking of halibut which are in addition to, and not in conflict with, those adopted by the International Pacific Halibut Commission (IPHC). This action is intended to promote the goals and objectives of the IFQ Program, the Northern Pacific Halibut Act of 1982, and other applicable laws.

DATES: Submit comments on or before [*insert date 15 days after date of publication in the FEDERAL REGISTER*]

ADDRESSES: You may submit comments, identified by FDMS Docket Number

NOAA-NMFS-2021-0032, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA-NMFS-2021-0032 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Susan Meyer. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.

Instructions: NMFS may not consider comments sent by any other method, to any other address or individual, or received after the end of the comment period. All comments received are a part of the public record and will generally be posted for public viewing on <http://www.regulations.gov> without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous).

Electronic copies of the Categorical Exclusion and the Regulatory Impact Review (RIR) prepared for this action (referred to as the “Analysis”) are available from <http://www.regulations.gov> or from the NMFS Alaska Region website at <http://alaskafisheries.noaa.gov>.

Additional requests for information regarding halibut may be obtained by contacting the IPHC, 2320 W. Commodore Way, Suite 300, Seattle, WA 98199-1287; or Sustainable Fisheries Division, NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802; Sustainable Fisheries Division.

FOR FURTHER INFORMATION CONTACT: Abby Jahn, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Authority for Action

The IPHC and NMFS manage fishing for halibut through regulations established under the authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). The IPHC promulgates regulations governing the halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Convention). The IPHC's regulations are subject to approval by the Secretary of State with the concurrence of the Secretary of Commerce (Secretary). NMFS publishes the IPHC's regulations as annual management measures pursuant to 50 CFR 300.62. The 2021 IPHC annual management measures were published on March 9, 2021 (86 FR 13475).

The Halibut Act, 16 U.S.C. 773c(a) and (b), provides the Secretary with general responsibility to carry out the Convention and the Halibut Act. The Halibut Act, 16 U.S.C. 773c(c), also provides the North Pacific Fishery Management Council (Council) with authority to develop regulations, including limited access regulations, that are in addition to, and not in conflict with, approved IPHC regulations. Regulations recommended by the Council may be implemented by NMFS only after approval by the Secretary.

The Council has exercised its authority in developing halibut management programs for the subsistence, sport, and commercial halibut fisheries. The Secretary exercised authority to implement the commercial IFQ halibut fishery management program (58 FR 59375; November 9, 1993). The IFQ Program for the halibut fishery is implemented by Federal regulations at 50 CFR part 679.

The halibut IFQ fishery is managed in specific areas defined by the IPHC. These IFQ regulatory areas (Areas) are: Area 2A (California, Oregon, and Washington); Area 2B (British Columbia); Area 2C (Southeast Alaska), Area 3A (Central Gulf of Alaska),

Area 3B (Western Gulf of Alaska), and Area 4 (subdivided into five areas, 4A through 4E, in the Bering Sea and Aleutian Islands of Western Alaska). These Areas are described at 50 CFR part 679, Figure 15. Halibut allocated under the IFQ program in Areas 2C, 3A, 3B, and Area 4 are subject to limits on the maximum amount of halibut IFQ that may be harvested by a vessel, commonly known as vessel use caps.

NMFS also allocates halibut to the Western Alaska Community Development Quota (CDQ Program) in Areas 4B, 4C, 4D, and 4E (§ 679.31(a)(2)). Halibut is allocated to the CDQ Program in Areas 4B, 4C, 4D, and 4E and those allocations are not subject to a vessel use cap. Throughout this preamble, the term “vessel use cap” refers to regulations applicable to the halibut IFQ fishery.

Background

This proposed rule would implement regulations to temporarily remove vessel use caps in Areas 4A, 4B, 4C, and 4D in 2021. The existing vessel use caps were recommended by the Council and implemented by NMFS as part of the IFQ Program (58 FR 59375; November 9, 1993) as regulations that were in addition to, and not in conflict with, those adopted by the IPHC, consistent with the Halibut Act (16 U.S.C. 773c(c)).

The following sections describe the IFQ Program, halibut IFQ vessel use caps, the rationale and effects of temporarily removing vessel use caps in Areas 4A, 4B, 4C, and 4D, and the regulations that would be implemented under this proposed rule.

IFQ Program

Commercial halibut and sablefish fisheries in Alaska are subject to regulation under the IFQ Program and the CDQ Program (50 CFR part 679). A key objective of the IFQ Program is to support the social and economic character of the fisheries and the coastal fishing communities where many of these fisheries are based. For more information about the IFQ Program, please refer to Section 2.3.1 of the Analysis.

Because this rule is specific to the halibut IFQ fishery, reference to the IFQ Program in this preamble is specific to halibut unless otherwise noted.

Under the IFQ Program, access to the commercial halibut fisheries is limited to those persons holding quota share (QS). Quota share is an exclusive, revocable privilege that allows the holder to harvest a specific percentage of the annual commercial catch limit in the halibut fishery. In addition, QS is designated for specific geographic areas of harvest, a specific vessel operation type (catcher vessel (CV) or catcher/processor), and for a specific range of vessel sizes that may be used to harvest the sablefish or halibut (vessel category). Out of the four vessel categories of halibut QS, Category A shares are designated for catcher/processors that process their catch at sea (*e.g.*, freezer longline vessels) and do not have a vessel length designation, whereas Category B, C, and D shares are designated to be fished on CVs that meet specific length designations (§ 679.40(a)(5)).

NMFS annually issues IFQ permits to each QS holder. An annual IFQ permit authorizes the permit holder to harvest a specified amount of the IFQ species in an Area from a specific operation type and vessel category. IFQ is expressed in pounds (lbs) and is based on the amount of QS held in relation to the total QS pool for each Area with an assigned catch.

The IFQ Program established: 1) limits on the maximum amount of QS that a person could use (*i.e.*, be used to receive annual IFQ) (§ 679.42(f)); 2) limits on the number of small amounts of indivisible QS units, known as QS blocks, that a person can hold (§ 679.42(g)); 3) limits on the ability of IFQ assigned to one CV vessel category (vessel category B, C, or D IFQ) to be fished on a different (larger) vessel category with some limited exceptions (§ 679.42(a)(2)); and 4) limits on the maximum amount of halibut IFQ that may be harvested by a vessel during an IFQ fishing year (§ 679.42(h)). Only qualified individuals and initial recipients of QS are eligible to hold CV QS and

they are required to be on the vessel when the IFQ is being fished, with a few limited exceptions (§ 679.41(h)(2)). All of these limitations were established to retain the owner-operator nature of the CV halibut IFQ fisheries, limit consolidation of QS, and ensure the annual IFQ is not harvested on a small number of larger vessels.

On March 30, 2021, NMFS published an emergency rule to modify the temporary transfer provision of the IFQ Program for the commercial halibut and sablefish fisheries for the 2021 IFQ fishing year (86 FR 16542, March 30, 2021). That emergency rule allows QS holders to transfer IFQ to otherwise eligible recipients. This transfer flexibility promotes the complete and efficient harvest of the IFQ fisheries. Furthermore, that emergency rule temporarily alleviates impacts of unforeseen economic and social conditions in the IFQ fisheries. For example, QS holders would have more flexibility to select vessels to harvest their IFQ which may increase the number of vessels available to harvest (Section 2.6 of the Analysis). That emergency rule does not modify other provisions of the IFQ Program, including vessel use caps that may constrain fishing operations.

Halibut IFQ Vessel Use Caps

The IFQ Program established vessel use caps to limit the maximum amount of halibut that could be harvested on any one vessel. The limits are intended to help ensure that a minimum number of vessels are engaged in the halibut fishery and to address concerns about the socio-economic impacts of consolidation under the IFQ Program. For additional detail on vessel use caps, see the preamble to the proposed rule for the IFQ Program (57 FR 57130; December 3, 1992).

This proposed rule refers to halibut catch limits, commercial halibut allocations, and vessel use caps in net pounds or net metric tons. Net pounds and net metric tons are defined as the weight of halibut from which the gills, entrails, head, and ice and slime

have been removed. This terminology used in this proposed rule is consistent with the IPHC, which establishes catch limits and calculates mortality in net pounds.

Relevant to this proposed rule, regulations at § 679.42(h)(1) state: “No vessel may be used, during any fishing year, to harvest more IFQ halibut than one-half percent of the combined total catch limits of halibut for IFQ regulatory areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E.” Applying this regulation to 2021 yields a vessel use cap of 92,848 lbs (42.1 mt). This vessel use cap applies to vessels harvesting IFQ halibut in the areas subject to this proposed rule: Areas 4A, 4B, 4C, and 4D.

In addition, regulations at § 679.42(h)(1)(ii) state that “No vessel may be used, during any fishing year, to harvest more than 50,000 lb (22.7 mt) of IFQ halibut derived from QS held by a CQE.” Compared to § 679.42(h)(1)’s vessel use cap, § 679.42(h)(1)(ii) imposes an even more restrictive vessel use cap on vessels that are harvesting IFQ halibut derived from QS held by a community quota entity (CQE). A CQE is a NMFS-approved non-profit organization that represents small, remote, coastal communities that meet specific criteria to purchase and hold CV halibut QS on behalf of an eligible community. The CQE holds QS and leases the IFQ derived from the underlying QS to community residents. Relevant to this proposed rule, a CQE is authorized to hold halibut QS in Area 4B on behalf of the community of Adak, Alaska (79 FR 8870; February 14, 2014). Any vessel harvesting halibut IFQ derived from the QS held by the CQE representing the community of Adak is subject to this more restrictive 50,000 lb (22.7 mt) vessel use cap.

Rationale and Effects of Temporarily Removing Vessel Use Caps in Areas 4A, 4B, 4C, and 4D

On February 10, 2021, at their regularly-scheduled meeting, the Council addressed requests from IFQ fishery stakeholders to remove vessel use caps applicable to the halibut IFQ fisheries (Sections 1 and 2.3 of the Analysis). These requests were in part

based on the success of the 2020 emergency rule for removing vessel use caps in Area 4 which provided flexibility to the IFQ halibut fleet: in multiple areas, vessels harvested up to or over the vessel use cap. Based on stakeholder engagement and considering a range of factors, the Council recommended, and now NMFS issues, this proposed rule. These factors include, but are not limited to:

- The unforeseen complications of health advisories and government-issued travel policies impose on fishing operations in the 2021 fishing year, particularly in the remote BSAI halibut IFQ fishery. These advisories and policies may restrict the ability for vessels and crew to operate and fully harvest their IFQ (Sections 2.3 and 2.5 of the Analysis);
- The relatively large proportion of vessels participating in the Area 4A, 4B, 4C, and 4D halibut IFQ fishery that are operating near the current vessel use cap, thereby limiting the amount of additional IFQ that could be harvested on vessels operating in those Areas (Section 2.3 of the Analysis);
- The minimum number of vessels required to fully harvest the IFQ held by the affected CQE representing the community of Adak, Alaska, exceeds the number of vessels owned by residents of the community (Sections 2.3.1.6 and 2.3.1.7 of the Analysis);
- Reduced ex-vessel prices due to poor market conditions that may further limit the number of vessels that can economically harvest their halibut IFQ in Areas 4A, 4B, 4C, and 4D (Sections 2.3.1.2 and 2.3.1.8 of the Analysis); and
- Public health risks, combined with health measures at specific remote ports in Areas 4A, 4B, 4C, and/or 4D, which may further limit the ability of smaller vessels to operate because processing facilities and vessel services are not available. For example, in 2020, the local St. Paul fleet did not operate due to public health risk and adverse economic conditions (Section 2.3 of the Analysis).

The reader is referred to the Analysis, particularly Sections 2.3 and 2.6, for additional detail on the efficacy of the 2020 emergency rule, the range of factors considered for this proposed rule, and the anticipated effects of removing the vessel use caps in Areas 4A, 4B, 4C, and 4D for both CQE-associated vessels and non-CQE-associated vessels.

After considering these factors, the Council recommended “expedited action” to remove vessel use caps for the halibut IFQ fishery in Areas 4A, 4B, 4C, and 4D. NMFS accordingly has established an expedited 15-day comment period for this proposed rule. Due to the widespread industry support and the Council’s request for expedited rulemaking and NMFS determination that the final rule should take effect before fishing vessels approach their use caps, the benefits of providing a shortened comment period and potentially expedited implementation outweigh there is good cause to expedite this thoroughly-considered action.

The Council did not recommend, and this proposed rule does not include, measures to relieve the vessel use caps for the sablefish IFQ fishery, or for other halibut IFQ Areas, due to the larger number of vessels that are currently active in the sablefish IFQ fishery and these other halibut Areas. Detailed information indicating that halibut harvests in these other IFQ Areas would not be constrained under the current vessel use caps is available in Section 2.3.1.4 of the Analysis.

The Council and NMFS also considered the potential impacts on halibut conservation and management if vessel use caps vessels in Areas 4A, 4B, 4C, and 4D are relieved for the 2021 IFQ fishing year. The proposed regulatory amendments in this rule would temporarily add a regulation that would remove vessel use caps in Areas 4A, 4B, 4C, and 4D because the vessel use caps may restrict the harvest of halibut in these areas, and less restrictive management measures are needed as soon as practicable to ensure the more complete harvest of the halibut resource during the 2021 IFQ fishing year. This proposed rule is responsive to the uncommon circumstances in the fishery in 2021 and

does not modify the vessel use cap provisions in future years, consistent with the Council's goals in implementing vessel use caps in this fishery (Section 2.3 in the Analysis). This proposed rule would not modify other elements of the IFQ Program. This proposed rule would not increase or otherwise modify the 2021 halibut catch limits adopted by the IPHC and implemented by NMFS (86 FR 13475, March 9, 2021). This proposed rule would not modify any other conservation measures recommended by the IPHC and adopted by NMFS, nor any other conservation measures implemented by NMFS independent of the IPHC. This proposed rule would not modify other limitations on the use of QS and IFQ described in the previous sections of this preamble.

Proposed Regulations

After considering the best available information, the Convention, the status of the halibut resource, and the potential social and economic costs of maintaining the vessel use cap limits described in this preamble, this proposed rule would add a new, temporary provision at 50 CFR 679.42(h)(1)(iii) to remove vessel use caps for vessels harvesting IFQ halibut in Areas 4A, 4B, 4C, and 4D during the 2021 IFQ fishing year. Because under existing regulations, vessel use caps are applied at the fishery level including harvest in all areas, the proposed regulations clarify that harvest of IFQ halibut in regulatory areas 4A, 4B, 4C, and 4D is excluded from the calculation of vessel use caps in IFQ regulatory areas 2C, 3A, or 3B during the 2021 IFQ fishing year.

Classification

Regulations governing the U.S. fisheries for Pacific halibut are developed by the International Pacific Halibut Commission (IPHC), the Pacific Fishery Management Council, the North Pacific Fishery Management Council (Council), and the Secretary of Commerce. Section 5 of the Northern Pacific Halibut Act of 1982 (Halibut Act, 16 U.S.C. 773c) allows the Regional Council with authority over a particular geographical area, to develop regulations governing the allocation and catch of halibut in U.S.

Convention waters as long as those regulations do not conflict with IPHC regulations.

This proposed action is consistent with the Council's authority to allocate halibut catches among fishery participants in the waters in and off Alaska.

This rule has been determined to be not significant for purposes of Executive Order 12866.

A Regulatory Impact Review was prepared to assess costs and benefits of available regulatory alternatives. A copy of this analysis is available from NMFS (see **ADDRESSES**). Specific aspects of the economic analysis are discussed below in the Initial Regulatory Flexibility Analysis section.

Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis (IRFA) was prepared for this proposed rule, as required by Section 603 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 603), to describe the economic impact this proposed rule, if adopted, would have on small entities. The IRFA describes the action; the reasons why this proposed rule is proposed; the objectives and legal basis for this proposed rule; the number and description of directly regulated small entities to which this proposed rule would apply; the recordkeeping, reporting, and other compliance requirements of this proposed rule; and the relevant Federal rules that may duplicate, overlap, or conflict with this proposed rule. The description of the proposed action, its purpose, and the legal basis are explained in the preamble and are not repeated here.

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide.

Number and Description of Small Entities Regulated by This Proposed Rule

This proposed rule would directly regulate the owners and operators of vessels that have traditionally harvested halibut IFQ in IFQ Areas 4A, 4B, 4C, or 4D. From 2014 through 2019, (the most recent year with complete data) 119 unique vessels harvested halibut IFQ in IFQ Areas 4A, 4B, 4C, or 4D. Based on average annual gross revenue data, including affiliations, all but three of the vessels that landed halibut between 2014 and 2019 are considered small entities based on the \$11 million threshold. Additional detail is included in Sections 2.8 in the Analysis prepared for this proposed rule (see **ADDRESSES**).

Impacts of this Action on Small Entities

This action would relieve a restriction which could lead to a larger total harvest of IFQ in Area 4 in fishing season 2021. Although it is difficult to predict the direct impact of the regulatory exemptions implemented for the 2020 IFQ seasons, harvest rates achieved in 2020 relative to all other years (2006-2020) likely indicates the regulatory flexibilities implemented in 2020 (both the temporary transfer provisions as well the vessel use cap exemption) had some positive impact on the harvest rates, as described in Section 2.6 of the Analysis prepared for this action (See **ADDRESSES**).

Description of Significant Alternatives That Minimize Adverse Impacts on Small Entities

The RFA requires identification of any significant alternatives to the proposed rule that accomplish the stated objectives of the proposed action, consistent with applicable statutes, and that would minimize any significant economic impact of the proposed rule on small entities. The Council requested an action alternative and in considering the Council's request NMFS analyzed the impacts of the action alternative compared to the status quo.

The status quo alternative would retain the existing vessel use cap restrictions as defined under 50 CFR 679.42(h). Considering the existing social and economic

conditions in the IFQ fishery since 2020, the supply of vessels available to prosecute Area 4 halibut IFQ fisheries could be limited such that a portion of the 2021 annual halibut allocation could be left unharvested if available vessels must comply with existing halibut IFQ vessel use limitations.

The action alternative would remove limits on the maximum amount of halibut IFQ that may be harvested by a vessel in IFQ regulatory areas 4A, 4B, 4C, and 4D. The action alternative and the regulations proposed by this action would provide additional flexibility to IFQ participants in 2021 to ensure allocations of halibut IFQ can be harvested by the limited number of vessels operating in these areas.

Duplicate, Overlapping, or Conflicting Federal Rules

NMFS has not identified any duplication, overlap, or conflict between this proposed rule and existing Federal rules.

Recordkeeping, Reporting, and Other Compliance Requirements

This action does not contain additional recordkeeping, reporting, or other compliance requirements.

Collection-of-Information Requirements

This proposed rule does not contain a change to a collection of information requirement for purposes of the Paperwork Reduction Act of 1995. The existing collection of information requirements would continue to apply under the following OMB Control Number(s): 0648-0272, Alaska Pacific Halibut & Sablefish Fisheries: Individual Fishing Quota (IFQ).

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: April 7, 2021.

Samuel D. Rauch, III,

*Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

**PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF
ALASKA**

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108-447;
Pub. L. 111-281.

2. In § 679.42, add paragraph (h)(1)(iii) to read as follows:

§ 679.42 Limitations on use of QS and IFQ.

* * * * *

(h) * * *

(1) * * *

(iii) Notwithstanding the vessel use caps specified in paragraphs (h)(1) introductory text and (h)(1)(ii) of this section, vessel use caps do not apply to vessels harvesting IFQ halibut in IFQ regulatory areas 4A, 4B, 4C, and 4D during the 2021 IFQ fishing year. Harvest of IFQ halibut in regulatory areas 4A, 4B, 4C, and 4D is excluded from the calculation of vessel use caps for IFQ regulatory areas 2C, 3A, or 3B during the 2021 IFQ fishing year.

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[FR Doc. 2021-07520 Filed: 4/12/2021 8:45 am; Publication Date: 4/13/2021]